IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1066 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATVARBHAI J RATHOD

Versus

MODASA MUNICIPALITY

Appearance: 1. Special Civil Application No. 1066 of 1991
MR BB NAIK for Petitioner No. 1
MR HA DAVE for MR SN SHELAT for Respondent No. 1-2
MS SHRUTI D TRIVEDI for Respondent No. 1
RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

Date of decision: 18/08/2004

ORAL JUDGEMENT

#. Petitioner-Natvarbhai J. Rathod belongs to Scheduled Caste. He was serving as Octroi Clerk with the respondent-Modasa Nagarpalika since about 15 years with clean and unblemished record. He has filed this petition

and challenged the impugned decision of the respondentNo.2-Selection Committee of respondent-Modasa Nagarpalika of not selecting the petitioner for the post of Octroi Inspector and the resolution passed by the Modasa Nagarpalika to appoint respondent No.3 on the post of Octroi Inspector by promotion.

#. Respondent-municipality passed resolution No.14 dated 29.4.1989 and requested the Director of Municipalities to fill in some vacant posts in the municipality. One of the posts was of Octroi Inspector. Director of Municipalities granted promotion to fill up those posts in January, 1999 with a direction to the municipality to fill up the post from the candidates of Scheduled Casts, Scheduled Tribe, Socially and Economically Backward Castes and retired Armed personnel. Thereupon, the petitioner submitted application to the respondent-Nagarpalika to appoint him on the post of Octroi Inspector since he was the only candidate fulfilling all the requisite qualifications and experience from Scheduled Caste. Instead of it, the respondent-Nagarpalika issued public advertisement dated 10.12.1990 in the newspaper dated 13.12.1990 inviting applications to fill up 7 posts in the respondent-Nagarpalika, including the post of Octroi Inspector (Annexure-A).

#. In response to the said advertisement, the petitioner also applied. However, the respondent No.2 selected respondent No.3, out of 24 candidates remained present for interview in response to the advertisement and accordingly respondent-Nagarpalika passed resolution dated 22.2.1991 appointing respondent No.3 on promotion to the post of Octroi Inspector of Nagarpalika. Hence, this petition.

#. As per the advertisement at Annexure-A, appointment to the post of Octroi Inspector was to be made from outside the department. Therefore, both the petitioner as well as the respondent No.3 had applied and the respondent No.3 was appointed by giving promotion after interview by the respondent-Municipality on the selection being made by respondent No.2-Committee. That was against the spirit of the advertisement. If some one was to be promoted from the Department, then obviously petitioner was the senior most and most eligible person and as per the rules he could have been straightaway promoted. It appears that to bypass the claim of the petitioner, a show was made by the respondent-Nagarpalika of issuing advertisement for 7 posts, including the post of the Octroi Inspector. The claim of the petitioner for

promotion to the higher post of Octroi Inspector from the lower post of clerk cannot be bypassed like this.

#. It is true that this court cannot sit in appeal over the decision of the selection Committee as submitted by learned counsel, Mr.Dave for the respondent-Nagarpalika. He relied on the judgment of the Hon'ble Supreme Court in case of Union of India v. Ashutosh Kumar Srivastava reported in (2002)1 SCC 188, but in my considered opinion the said judgment has no application on the facts of this case. As stated earlier, a clear device was found out to bypass the claim of the petitioner by the respondent-Nagarpalika in getting the post of Octroi Inspector also being advertised along with other 6 posts. The impugned resolution by which the respondent No.3 was appointed on promotion clearly shows that there was a legal malice on the part of the respondent-Nagarpalika in depriving the right of the petitioner to the higher post of Octroi Inspector from the lower post of Octroi Clerk as per the seniority and rules for promotion framed by the respondent-Nagarpalika.

#. Mr.Dave then submitted that respondent No.3 was already promoted to the post of Octroi Inspector way back in 1991 in pursuance to the impugned resolution passed by the respondent-Nagarpalika and, thereafter, the Octroi Department was closed as per the notification issued by the State Government vide its Gazette dated 30.4.2001. Therefore, respondent No.3 is now absorbed in some other equivalent post. He, therefore, submitted that after 13 years of his promotion to the post of Octroi Inspector, it would not be proper for this court to quash and set aside the promotion. It is true that by now he must have worked on the higher post for a period of last more than 13 years, but it has come on record that at the time of his selection there were two complaints of serious nature against him and in spite of it, the Selection Committee, for the reasons best know to it, selected him on the ground that they were not of serious nature.

#. In view of the above discussion, this petition is allowed and the impugned decision of the Selection Committee selecting the respondent No.3 namely Mr.Hitesh V. Bhutala for the post of Octroi Inspector is hereby quashed and set aside and subsequent resolution passed by the respondent-Nagarpalika of promoting the respondent No.3 on the post of Octroi Inspector from the lower post of Octroi Clerk on the basis of the impugned decision of the Selection Committee is also hereby quashed and set aside.

It is not in dispute that the petitioner was otherwise eligible and entitled for the promotion to the post of Octroi Inspector from the lower post of Octroi Clerk. Therefore, respondent-Nagarpalika is directed to consider the case of the petitioner for promotion to the post of Octroi Inspector with effect from 22.1.1991. If he is otherwise found fit for promotion, then he may be promoted to the post of Octroi Inspector by giving him deemed date. Now, the post of Octroi Inspector is abolished, therefore, he will have to be appointed on an equivalent post on which the respondent No.3 is presently working. However, he will not be entitled for the difference in the salary as he has not worked on the higher post, but he will be entitled for all other notional benefits, as if he was appointed on promotion with effect from 22.1.1991. Accordingly, rule is made absolute with costs.

(B.J.Shethna, J.)

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